

Department of State

§ 171.70

be sent by certified mail to the Assistant Secretary for Public Affairs, Chairperson, Appeals Review Panels, Department of State, 2201 C Street, NW, Washington, DC 20520.

(b) The time for decision on the appeal begins on the date the appeal is received by the Chairperson, Appeals Review Panels. The appeal should include any documentation, information or statements advanced for the amendment of the record.

(c) The Chairperson of the Appeals Review Panels and two other members of the Panels designated by him shall constitute a panel to consider and decide the appeal; there shall be a written record of the reasons for the final determination. The final determination will be made within 30 days (excluding Saturdays, Sundays, and legal public holidays), unless for good cause shown, the Chairperson of the Appeals Review Panels extends such determination beyond the 30-day period.

(d) When the final determination is that the record should be amended in accordance with the individual's request, the Chairperson of the Appeals Review Panels shall direct the office responsible for the record to comply. A responsible official of the Department shall then:

- (1) Amend the records as directed;
- (2) If any accounting of the disclosure has been made, advise all previous recipients of the record of the amendment and its substance;
- (3) So advise the individual in writing.

(e) When the final decision is that the request of the individual to amend the record is refused, the Chairperson of the Panels shall advise the individual:

- (1) Of the refusal and the reasons for it;
- (2) Of her and his right to file a concise statement of the reasons for disagreeing with the decision of the Department;
- (3) Of the procedures for filing the statement of disagreement;
- (4) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Department, a brief statement by the Department summarizing its

reasons for refusing to amend the record;

(5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and

(6) Of her/his right to seek judicial review of the Department's refusal to amend the record.

(f) When the final determination is to refuse to amend a record and the individual has filed a statement under paragraph (e) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to, use, or disclose it. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Department will note that the information is disputed and provide a copy of the individual's statement. The Department may also include a brief summary of the reasons for not making a correction when disclosing disputed information. Such statements will normally be limited to the reasons given to the individual for not amending the record. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by the individual under these regulations.

[45 FR 58108, Sept. 2, 1980, as amended at 49 FR 16990, Apr. 23, 1984]

Subpart H—Other Agency Material

§ 171.70 Referral.

While processing a request for access, the Department may locate in its files documents originated by other Federal agencies. The Department shall refer the documents to the originating agency for review and possible declassification and release to the requester. The originating agency is then responsible for contacting the requester directly concerning the release of the material and for notifying the Department of its determination. The Department of State will notify the requester of the referral unless the association of the reviewing agency with the information

requires protection in the interest of national security.

§ 171.71 Concurrence.

While processing a request for access, the Department may locate Department of State documents containing information originated by or of substantive interest to other Federal agencies. The Department shall refer these documents or portions thereof to the originating or interested agency for review, possible declassification and concurrence regarding the documents' release. The other agency will then return the documents to the Department so that it may contact the requester regarding the material.

PART 172—SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMIS- SIONS, INTERROGATORIES, OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR STATE LITIGATION; EXPERT TESTIMONY

Sec.

172.1 Purpose and scope; definitions.

172.2 Service of summonses and complaints.

172.3 Service of subpoenas, court orders, and other demands or requests for official information or action.

172.4 Testimony and production of documents prohibited unless approved by appropriate Department officials.

172.5 Procedure when testimony or production of documents is sought; general.

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172.8 Considerations in determining whether the Department will comply with a demand or request.

172.9 Prohibition on providing expert or opinion testimony.

AUTHORITY: 5 U.S.C. 301; 8 U.S.C. 1202(f); 22 U.S.C. 2658, 2664, 3926.

SOURCE: 57 FR 32896, July 24, 1992, unless otherwise noted.

§ 172.1 Purpose and scope; definitions.

(a) This part sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Department of State (Department) or to any Department employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of the Department; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial authority (collectively, "demands"), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired while the subject of the demand or request is or was an employee of the Department as part of the performance of that person's duties or by virtue of that person's official status.

(b) For purposes of this part, and except as the Department may otherwise determine in a particular case, the term *employee* includes the Secretary and former Secretaries of State, and all employees and former employees of the Department of State or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of State or his Chiefs of Mission, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors.

(c) For purposes of this part, the term *litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards (including the Board of Appellate Review), or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This part governs, *inter alia*, responses to discovery requests,